

CHAPTER 3:

CUSTODY AND DETENTION

**Juvenile Probation Officer and Caseworker
Self-Instructional Manual**

JUVENILE PROBATION OFFICER AND CASEWORKER SELF-INSTRUCTIONAL MANUAL

CHAPTER 3: CUSTODY AND DETENTION

Taking Temporary Custody of or “Detaining” a Juvenile Pending Preliminary Hearing

MCL 712A.14, MCR 3.933, and MCR 3.934 discuss the procedures to follow when taking a juvenile into temporary custody and when “lodging” or detaining a juvenile pending a preliminary hearing in the family division. Under MCR 3.903(B)(3), “offense by a juvenile” includes a violation of a criminal law or ordinance, violation of a traffic law, or commission of a status offense.

Obtaining Custody of a Juvenile Without a Family Division Order

Obligations of Officer Immediately After a Juvenile Is Taken Into Custody

MCL 712A.14(1) provides that a police officer, sheriff, deputy sheriff, county agent, or probation officer may, without a court order, take into custody any juvenile who is found violating any law or ordinance; whose surroundings are such as to endanger the juvenile’s health, morals, or welfare; or who is violating or has violated a PPO or valid foreign protection order. After apprehending the juvenile, the officer or agent must immediately attempt to notify the juvenile’s parent or parents, guardian, or custodian. While awaiting arrival of the parent or parents, guardian, or custodian, the juvenile must not be held in a detention facility unless the juvenile can be isolated so as to prevent any verbal, visual, or physical contact with any adult prisoner. MCR 3.933(D).



JUVENILE PROBATION OFFICER AND CASEWORKER SELF-INSTRUCTIONAL MANUAL
CHAPTER 3: CUSTODY AND DETENTION

Obligations of Officer After Notification or Attempt to Notify Parent, Guardian, or Legal Custodian

When an officer apprehends a juvenile for an offense without a court order and does not warn and release the juvenile, does not refer the juvenile to a diversion program, and does not have authorization from the prosecuting attorney to file a complaint and warrant charging the juvenile with an offense as though an adult pursuant to MCL 764.1f, the officer may:

- (1) issue a citation or ticket to appear at a date and time to be set by the court and release the juvenile;
- (2) accept a written promise of the parent, guardian, or legal custodian to bring the juvenile to court, if requested, at a date and time to be set by the court, and release the juvenile to the parent, guardian, or legal custodian; or
- (3) take the juvenile into custody and submit a petition”

Emergency Removal of Indian Children Charged With Status Offenses

An Indian child must not be removed...without clear and convincing evidence that services designed to prevent the break up of the Indian family have been furnished to the family and that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical injury to the child. Evidence must include testimony of expert witnesses who have knowledge about the child-rearing practices of the Indian child's tribe. MCR 3.980(C)(3).



JUVENILE PROBATION OFFICER AND CASEWORKER SELF-INSTRUCTIONAL MANUAL
CHAPTER 3: CUSTODY AND DETENTION

DETENTION

Factors To Consider When Deciding Whether Juvenile Should Be Released From Custody

MCR 3.933(A)(3)(a)-(b) set out the factors the officer should consider in deciding whether to maintain custody of the juvenile. The officer should take the juvenile into custody and submit a petition under MCR 3.933(A)(3) if either of the following circumstances exist:

- (a) the officer has reason to believe that because of the nature of the offense, the interest of the juvenile or the interest of the public would not be protected by release of the juvenile, or
- (b) a parent, guardian, or legal custodian cannot be located or has refused to take custody of the child. MCL 712A.14(2).

If the juvenile is not released, the juvenile and his or her parents, guardian, or custodian must immediately be brought before the court for a preliminary hearing. At the conclusion of the preliminary hearing, the court will either authorize the petition to be filed or will dismiss the petition and release the juvenile.



JUVENILE PROBATION OFFICER AND CASEWORKER SELF-INSTRUCTIONAL MANUAL
CHAPTER 3: CUSTODY AND DETENTION

Obligation To Notify Family Division If Juvenile Is Not Released From Custody

MCR 3.933(C)(1)-(3) require the officer or agent taking custody of the juvenile to immediately contact the court if:

- (1) the officer detains the juvenile;
- (2) the officer is unable to reach a parent, guardian, or legal custodian who will appear promptly to accept custody of the juvenile; or
- (3) the parent guardian, or legal custodian will not agree to [sign a written promise to bring the juvenile to court.]

Additional Obligations Of Officer If Juvenile Is Not Released

MCR 3.934(A)(1)-(4) set forth four obligations of an officer or agent. The officer or agent must:

- (1) forthwith take the juvenile
 - (a) before the court for a preliminary hearing, or
 - (b) to a place designated by the court pending the scheduling of a preliminary hearing;
- (2) ensure that the petition [or a complaint] is prepared and presented to the court;
- (3) notify the parent, guardian, or legal custodian of the detaining of the juvenile, and of the need for the presence of the parent, guardian, or legal custodian at the preliminary hearing;
- (4) prepare a custody statement for submission to the court including:
 - (a) the grounds for and the time and location of detention, and
 - (b) the names of persons notified and the times of notification, or the reason for failure to notify.



JUVENILE PROBATION OFFICER AND CASEWORKER SELF-INSTRUCTIONAL MANUAL
CHAPTER 3: CUSTODY AND DETENTION

Obligations Of Officer If Family Division Is Not Open

MCR 3.934(B)(1) states that when a juvenile is apprehended without a court order and the court is not open, the juvenile may be detained pending a preliminary hearing if no parent, guardian, or legal custodian can be located, or if the juvenile or the offense meets the criteria set forth in MCR 3.935(D)(1).

MCR 3.935(D)(1) allows for detention if one or more of the following circumstances are present:

- (a) release would endanger the public safety;
- (b) the juvenile charged with a felony offense will likely commit another offense pending trial, if released, and
 - (i) another petition is pending against the juvenile,
 - (ii) the juvenile is on probation, or
 - (iii) the juvenile has a prior adjudication, but is not under the court's jurisdiction at the time of apprehension;
- (c) there is a substantial likelihood that if the juvenile is released, the juvenile will fail to appear at the next court proceeding;
- (d) the home conditions of the juvenile make detention necessary;
- (e) the juvenile has run away from home;
- (f) the juvenile has failed to remain in a detention facility or nonsecure facility or placement in violation of a court order; or
- (g) pretrial detention is otherwise specifically authorized by law.



JUVENILE PROBATION OFFICER AND CASEWORKER SELF-INSTRUCTIONAL MANUAL

CHAPTER 3: CUSTODY AND DETENTION

Some Circumstances That Allow For Detention

MCL 712A.15(2) provides detention as an alternative for:

- (b) Those who have a record of unexcused failures to appear at juvenile court proceedings;
and
- (f) Those who have allegedly violated a personal protection order and for whom it appears there is a substantial likelihood of retaliation or continued violation.

Court Contacts

Pursuant to MCR 3.934(B)(2), each family division must designate a person whom an officer may contact to obtain permission to temporarily detain a juvenile when the court is not open. That rule states:

“The court must designate a judge, referee, or other person who may be contacted by the officer taking a juvenile into custody when the court is not open. In each county there must be a designated facility open at all times at which an officer may obtain the name of the person to be contacted for permission to detain the juvenile pending preliminary hearing.”

Note: “Court intake workers,” referees, or detention personnel often make the initial detention determination. *You should consult your court administrator and/or chief judge on the procedure your court uses.*



JUVENILE PROBATION OFFICER AND CASEWORKER SELF-INSTRUCTIONAL MANUAL

CHAPTER 3: CUSTODY AND DETENTION

Places of Detention for Alleged Juvenile Delinquents

As a general rule, a juvenile must be detained in the least restrictive environment that will meet the needs of the juvenile and the public. This definition allows for placement in a nonsecure facility or foster home.

If a juvenile under the age of 17 is taken into custody or detained, “the juvenile shall not be confined in any police station, prison, jail, lockup, or reformatory, or transported with, or compelled or permitted to associate or mingle with, criminal or dissolute persons.” MCL 712A.16(1).

However, except as provided for status offenders, a juvenile 15 years who might not otherwise be safely detained, may be placed in a jail or other place of detention for adults, but in a room or ward separate from adults, and for a period not to exceed 30 days, unless longer detention is necessary for the service of process. MCL 764.27a(2) creates the additional restriction that juveniles confined in a jail or other place of detention for adults must be placed in a room or ward out of sight and sound of adults.

MCL 712A.16(2)(c) gives the court authority to place a juvenile over 17 years of age in a county jail if the juvenile is kept “in a room or ward separate and apart from adult criminals.”

Note: MCL 750.139(1) provides that a child under 16 years of age while under arrest, confinement, or conviction for any crime must not be:

- placed in any apartment or cell of any prison, or place of confinement with any adult under arrest, confinement, or conviction for a crime;
- permitted to remain in any court room during the trial of adults; or
- be transported with adults charged with or convicted of crime.

Any person who violates these provisions shall be guilty of a misdemeanor. MCL 750.139(3).



JUVENILE PROBATION OFFICER AND CASEWORKER SELF-INSTRUCTIONAL MANUAL
CHAPTER 3: CUSTODY AND DETENTION

Places of Detention for Alleged Status Offenders

MCL 712A.15(3) and (5) discuss places of detention for juveniles alleged to be status offenders (runaways, habitually disobedient, and/or truants).

Pursuant to MCL 712A.15(3), a child taken into custody for being an alleged status offender and who is not under the court's jurisdiction for a criminal offense must not be detained in any secure detention facility for juvenile offenders unless the court finds that the child willfully violated a court order and the court finds, after a hearing and on the record, that there is no less restrictive alternative more appropriate to the needs of the child.

Requirements of the Crime Victim's Rights Act

MCL 780.782 requires the law enforcement agency investigating a juvenile offense to provide a victim with an opportunity to request notice of the juvenile's arrest, subsequent release, or both. If the victim requests such notice, the law enforcement agency must promptly provide it. In addition, the victim must be provided with notice of the availability of pretrial release for the juvenile and the telephone number of the appropriate detention facility so that the victim may call to find out if the juvenile has been released.



JUVENILE PROBATION OFFICER AND CASEWORKER SELF-INSTRUCTIONAL MANUAL

CHAPTER 3: CUSTODY AND DETENTION

If a juvenile is placed in a juvenile facility following the preliminary hearing in a juvenile delinquency case, the prosecuting attorney or court must provide the victim with the telephone number of the juvenile facility in which the juvenile is detained. The victim of a juvenile offense may contact the juvenile facility to determine whether the juvenile has been released. Moreover, if the victim has requested, the law enforcement agency must notify the victim of the juvenile's arrest, pretrial release, or both.

Note: In juvenile delinquency cases, MCL 780.798a authorizes the prosecuting attorney to enter a written agreement that the court will perform many of the prosecutor's notification duties if the court performed those functions before May 1, 1994.

